AUG 2 2003

No. 02-1752

IN THE

Supreme Court of the United States

HUGHES ELECTRONICS CORPORATION, INC.
and DIRECTV, INC.,

Petitioners,

v.

ROBERT GARCIA, d/b/a DIRECT SATELLITE TV;
D3 TECHNOLOGIES, INC.; CLEAR CHOICES II, LTD.;
SWARTZEL ELECTRIC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Petitioner's Corporate Disclosure Statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

INTRODUCTION

On June 23, 2003, this Court decided *Green Tree Fin. Corp. v. Bazzle*, 123 S. Ct. 2402 (2003), which is dispositive of the question presented in Hughes Electronics Corporation, Inc. and DIRECTV's (collectively "DIRECTV") Petition for a Writ of Certiorari. Accordingly, the Court should grant DIRECTV's petition, vacate the lower court decisions, and remand the matter for further proceedings consistent with *Bazzle*.

I.

Respondents' Brief in Opposition to Petitioners' Writ of Certiorari asks this Court to deny or dismiss DIRECTV's petition for certiorari as moot because "[t]he question presented here has already been resolved by this Court in *Bazzle*." Respondents' Brief in Opposition at 2. Respondents' Opposition, however, is disingenuous and misleading to this Court since just recently Respondents requested that the California Court of Appeal disregard the *Bazzle* decision in its entirety on the grounds that it is distinguishable from the instant action. Respondents are hoping that this Court will deny or dismiss DIRECTV's petition so that they can then seek to avoid the impact of this Court's recent decision in *Bazzle*, which requires reversal of the lower court rulings in this case. Respondents' Opposition highlights the very reason why this Court should grant DIRECTV's petition, vacate the lower court decisions and remand this case for further proceedings consistent with the *Bazzle* decision.

In *Bazzle*, the South Carolina Supreme Court "held that the contracts were silent in respect to class arbitration, that they consequently authorized class arbitration, and that arbitration had properly taken that form." *Bazzle*, 123 S. Ct.

at 2406.[1] This Court vacated the ruling of the Supreme Court of South Carolina and held that the propriety of classwide arbitration was a matter of contractual interpretation which rests exclusively in the decision-making authority of the arbitrator. Thus, whether a contract forbids classwide arbitration is a matter of contract interpretation for the arbitrator—not the courts—to decide. *See id.* at 2407.

Moreover, the arbitrator's interpretation of the parties' agreement should be independent and not be influenced by a court's interpretation of the agreement as to whether or not it permits classwide arbitration. In *Lackey*, the companion case to *Bazzle*, this Court vacated the arbitrator's decision to permit classwide arbitration because it found "at least a strong likelihood in *Lackey* as well as in *Bazzle* that the arbitrator's decision reflected a *court's* interpretation of the contracts rather than an arbitrator's interpretation." *Id.* at 2408 (emphasis added). This Court explained: "That being so, we remand the case so that the arbitrator may decide the question of contract interpretation—thereby enforcing the parties' arbitration agreements according to their terms." *Id.*

Although acknowledging before this Court that *Bazzle* resolves the issue presented by Petitioners' Writ of Certiorari, Respondents currently are arguing to the California Court of Appeal that *Bazzle* is inapplicable to this case and therefore, the court of appeal's prior decision permitting classwide arbitration should not be disturbed. According to Respondents, "[The court of appeal] has already decided th[e] question 'when the arbitration agreement between the parties is silent as to

1. The South Carolina Supreme Court relied upon *Blue Cross v. Super. Ct.*, 67 Cal. App. 4th 42 (1998) and other California authorities relied upon by Respondents below to support their argument that California law permits classwide arbitration.

classwide arbitration and state law specifically authorizes it in appropriate cases, an order compelling classwide arbitration neither contradicts the contractual terms nor contravenes the policy behind the [FAA]." Respondents' Brief in Opposition, App. at 7b-8b. Therefore, Respondents argue, "[b]ecause this Court has already decided that issue, the arbitrator lacks authority to commit legal error by deciding the issue inconsistently with California law established by California courts." *Id.* at 8b.

Contrary to the clear dictate of *Bazzle*, which precludes a court from making the determination as to whether the parties' agreement permits or forbids classwide arbitration, Respondents have asked the California Court of Appeal to make this determination itself—as a matter of state law—and divest the arbitrator of its authority to interpret the contract. Indeed, Respondents have requested that the California Court of Appeal simply affirm its prior decision, holding that classwide arbitration is permissible as a matter of California state law, and give "directions to the arbitrator that [DIRECTV] can no longer avail itself of the argument that the contract in this case fails to permit classwide arbitration." *Id.* at 8b.

Nothing could be more inconsistent with this Court's decision in *Bazzle*, which prohibits a court from making a determination as to whether classwide arbitration is permissible or not as a matter of *state law*. Moreover, Respondents are not merely trying to influence the arbitrator's interpretation of the parties' agreement, they are asking the court of appeal to remove entirely the arbitrators' authority to interpret the parties' agreement to determine whether classwide arbitration is permitted or not—a result which is directly at odds with this Court's decision.

In light of Respondents' effort to undermine the *Bazzle* decision, DIRECTV's petition for certiorari should be granted, the decisions of the lower courts should be vacated, and the matter remanded for further proceedings consistent with *Bazzle*.

CONCLUSION

In light of the foregoing, Petitioners respectfully request that this Court grant the petition for certiorari, vacate the December 11, 2002 Opinion of the court of appeal and the April 17, 2002 Ruling of the trial court, and remand the matter for further proceedings consistent with *Bazzle*.

Respectfully submitted,

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